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SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1952

No. 350

THE PEOPLE OF PUERTO RICO, NOW THE COMMONWEALTH OF PUERTO RICO,

Petitioner

vs.

CEMENTERIO BUXEDA, INC.,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT AND BRIEF IN SUPPORT THEREOF

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INDEX

Subject Index

	Page
Petition for Writ of Certiorari	1
Opinions Below	1
Jurisdiction	2
Questions Presented	4
Statement of the Case	5
Specifications of Errors to Be Urged	8
Reasons for Granting the Writ	9
Argument	11
Conclusion	17

Citations

Calderon v. *Reyes*, 31 P.R.R. 260	16
City of Los Angeles v. *Hughes*, 202 Cal. 731	12
Cortijo v. *Rosario*, 33 P.R.R. 415	16
Coto v. *Rafas*, 18 P.R.R. 493	16
De Castro v. *Board of Commissioners*, 322 U.S. 451 (1944)	2, 10, 11
Empie v. *U.S.*, 131 F. 2d 481	12
Felicie v. *Porto Rico Racing Corp.*, 38 P.R.R. 423	16
Figueroa v. *Figueroa, et als.*, 23 P.R.R. 405	16
Flores v. *Silva*, 60 P.R.R. 363	16
Garcia v. *Diaz*, 33 P.R.R. 98	16
Heisser Valley Land & Water Co. v. *Ryan*, 190 F. 417	13
In re Furman Street, 17 Wend. 649 (N.Y. 1836)	13
Latorre v. *Cruz*, 67 P.R.R. 696	16
Laureldale Cemetery Co. v. *Reading Co.*, 154 Atl. 372 (Pa. 1931)	5, 7, 9, 14
Madera & Hno. v. *Solares & Co.*, 43 P.R.R. 131	16
Maldonado v. *Quetell*, 68 P.R.R. 390	11
Mitchell v. *United States*, 267 U.S. 341 (1925)	3, 13
Monongahela Nevigation Co. v. *U. S.*, 148 U.S. 312 (1893)	12
Morton Butler Timber Co. v. *U. S.*, 91 F. 2d 884	12
Olson v. *United States*, 292 U.S. 246	9
Omnia Co. v. *United States*, 261 U.S. 502	13
People of Puerto Rico v. *Huyke*, 70 P.R.R. 720	3, 15

JUN 2 1954

206560

Page

Porto Rico Benevolent Society v. *Municipality of Ponce*, 28 P.R.R. 773 16
Puerto Rico Housing Authority v. *Echegaray*, No. 10,160, Supreme Court of Puerto Rico, decided June 29, 1951 ..... 3, 15
Rivera v. *Casiano*, 68 P.R.R. 177 11
Sancho Bonet v. *Texas Co. (P.R.) Inc.*, 308 U.S. 463 (1940) 2, 10
San Juan Light & Transit Co. v. *Requena*, 224 U.S. 89 16
Seaboard Air Line Ry. v. *U. S.*, 261 U.S. 299 12
Serra Garabis & Co. v. *Municipio*, 42 P.R.R. 452 16
St. Joe Paper Co. v. *U.S.*, 155 F. 2d 93 14
Sucesion Orcasitas & Sucesion Orcasitas, 21 P.R.R. 105 16
Sunland Biscuit Company v. *Junta de Salario Minimo*, 68 P.R.R. 345 11
Torres v. *Buscaglia*, 68 P.R.R. 318 11
Torres v. *Gonzalez*, 68 P.R.R. 43 11
Torres v. *Porto Rico Racing Corporation*, 40 P.R.R. 423 16
United States ex rel. T.V.A. v. *Powelson*, 319 U.S. 266 ..... 3, 9, 10, 12, 13
United States v. *Honolulu Plantation Co.*, 122 F. 581 ..... 3, 9, 13
U. S. v. *Meyer*, 113 F. 2d 387 ..... 3, 9, 10
U. S. v. *Miller*, 63 S. Ct. 27 12

STATUTES

Fifth Amendment to the Constitution of the United States 10, 12
28 U.S.C. Section 1254 (1) 2
Article 2, Section 9 of the Constitution of the Commonwealth of Puerto Rico 2, 4, 5, 11, 12
Section 2 of the Organic Act (48 U.S.C. Section 737), ... 2, 4, 5, 10, 12
Eminent Domain Act of Puerto Rico, Section 5 (a) 5

AUTHORITIES CITED

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MAY IT PLEASE THE COURT:

The petitioner, The People of Puerto Rico, now The Commonwealth of Puerto Rico, respectfully prays this Honorable Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit, entered in the above-entitled case on April 28, 1952.

Opinions Below

The statement of the case and opinion of the Court of Eminent Domain of Puerto Rico (R. 27) is unreported. The opinion of the Supreme Court of Puerto Rico (R. 111)

is unreported. The opinion of the United States Court of Appeals for the First Circuit (R. 127) is reported in 196 F. 2d 177.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on April 28, 1952. (R. 134). By orders of this Court dated July 28, 1952 and August 27, 1952, the time within which to file a petition for a writ of certiorari was extended to and including September 25, 1952. (R. 135). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

In this case is involved the admissibility, in Puerto Rican jurisdiction, of evidence as bearing on the just compensation to be awarded a condemnee for his property when taken for a public use, as provided by Article 2, Section 9 of the Constitution of The Commonwealth of Puerto Rico which corresponds to Section 2 of the former Organic Act of Puerto Rico (48 U.S.C. Section 737), now repealed; also the construction of local rules of evidence, set forth by opinions of the Supreme Court of Puerto Rico in cases of this nature, which bring this case within the purview of the doctrine of "inescapable wrong and patent error" laid down by this Court in *De Castro* v. *Board of Commissioners*, 322, U. S. 451 (1944) and *Sancho Bonet* v. *Texas Co. (P. R.) Inc.*, 308 U. S. 463 (1940) which makes the judgment entered by the Supreme Court of Puerto Rico of a nature that the Court of Appeals should have not upset. It deals also with a change of the doctrine and theory of the case by respondent, on appeal, which change was taken in consideration by the Court of Appeals in rendering its opinion and judgment.

Respondent's theory of the case at the trial was as follows; (a) the amount of just compensation it was entitled to receive should have been measured by the prices it (and

other cemeteries of the vicinity) was charging for burial facilities (which included the land, the concrete graves built-in, labor and charges for management) less expenses, multiplied by the number of grave sites that could be obtained from the condemned parcel of land (R. 40, 41, 42, 47-48, 63-64); and (b) the award of just compensation should have been determined by the value the land had to its owner including the benefits or profits it had been deprived by the taking. (R. 42, 48, 54, 56, 57, 61, 62).

To sustain its theory, respondent tried to introduce evidence of sales of burial facilities it (and other cemeteries) had made. The trial Judge did not admit this evidence on the ground that it was speculative and conjectural and that value to the owner was not the measure of just compensation. (R. 40, 42, 54-58, 60-61, 64, 68.) The rules of evidence relied by the trial Judge have been laid down by the Supreme Court of Puerto Rico in *People of Puerto Rico* v. *Huyke*, 70 P.R.R. 720; *Puerto Rico Housing Authority* v. *Echegaray*, No. 10, 160, Supreme Court of Puerto Rico, decided June 29, 1951, and by Federal Courts and this Court in *United States ex rel. T.V.A.* v. *Powelson*, 319 U. S. 266, 285 (1943); *Mitchell* v. *United States*, 267 U. S. 341, 345 (1925); *U. S.* v. *Meyer*, 113 F. 2d 387, Certiorari denied, *Meyer* v. *U. S.*, 61 S. Ct. 174; *United States* v. *Honolulu Plantation Co.*, 122 F. 581, 584-585. These rules of evidence set forth by the Supreme Court of Puerto Rico constitute the local law for the admissibility of evidence in cases of this nature.

The Court of Appeals took in consideration, to render its opinion and judgment, the change of the doctrine and theory of the case on appeal, made by respondent in its brief. The following excerpt is quoted from the opinion of the court below:

> " . . . We have no doubt that the court would have been correct had it rejected the evidence as to the

value of the individual burial sites if it had been introduced solely to indicate loss of business profits. For that purpose the evidence is irrelevant, *Mitchell* v. *United States,* 267 U. S. 341 (1925). But the defendant states in its brief: 'The evidence was offered not for the purpose of claiming profits as such, but to show the productiveness and capabilities for yielding profits and income as bearing on the value—the present value —of the land' " (R. 132, opinion of the court below).

In his concurring opinion, Honorable Chief Judge Magruder, of the Court of Appeals, states that ordinarily questions of the rules of evidence to be applied in the insular courts are questions of local Puerto Rican law, as to which said Court may not upset a judgment of the Supreme Court of Puerto Rico unless it is "inescapably wrong". But as the Bill of Rights in the former Organic Act of Puerto Rico (48 U.S.C. Section 737) contained the prohibition; "Private property shall not be taken or damaged for public use except upon payment of just compensation ascertained in the manner provided by law", it seemed to him that a federal question was presented, as to which that court was entitled to take its independent view, when the relevance, and hence admissibility, of evidence is determined by the factors which a condemnee is entitled to establish as bearing on the amount of "just compensation" guaranteed to him by the Organic Act.* (R. 134, opinion of the court below).

Questions Presented

Whether the decision and judgment of the Supreme Court of Puerto Rico is patently erroneous.

Whether the Supreme Court of Puerto Rico was ines-

* The Bill of Rights of the Organic Act were repealed. Now are in force the Bill of Rights contained in the Constitution of the Commonwealth of Puerto Rico wherein an identical prohibition is found in Article 2 Section 9.

capably wrong in affirming the trial court's rulings excluding and rejecting evidence tending to show value to its owner, prices paid for developed cemetery land and burial facilities including profits, as a measure of compensation for condemned property.

Whether the Supreme Court of Puerto Rico was inescapably wrong in applying to the instant case the doctrine laid out in *Laureldale Cemetery Co.* v. *Reading Co.*, 154 Atl. 372 (Pa. 1931).

Whether the Court of Appeals for the First Circuit is entitled to take an independent view from that taken by the Supreme Court of Puerto Rico, when the relevance, and hence admissibility, of evidence is determined by the factors which a condemnee is entitled to establish as bearing on the amount of "just compensation" guaranteed to him by Article 2 Section 9 of the Constitution of the Commonwealth of Puerto Rico, formerly Section 2 of the Organic Act. (48 U.S.C. Section 737).

Statement of the Case

On March 3, 1949, petitioner, The People of Puerto Rico, now The Commonwealth of Puerto Rico, filed a petition for condemnation in the Court of Eminent Domain of Puerto Rico to acquire several parcels of land located at Isla Verde, Puerto Rico, for the purpose of constructing a public road to deviate the existing one connecting the cities of Santurce and Carolina. This deviation was necessary because the former road was an obstacle to the International Airport now under construction at that place (R1). Among the condemned parcels of land is Parcel No. 14 which belonged to respondent corporation, with an area of 1,642.42 square meters (R. 18).

Under section 5 (a) of the Eminent Domain Act of Puerto Rico, petitioner filed a Declaration of Taking and deposited

in court the sum of $3,284.82 as the estimated just compensation for said parcel of land. (R. 7).

The condemned land was severed from a larger tract and bounds by its North with Insular Road No. 57 (R. 18). Both constituted the estate of "Cementerio Buxeda."

On June 10, 1949, respondent filed its answer to the petition for condemnation (R. 25) wherein alleged that the condemned property had a value of $49,846.50. It further alleged that as a result of the condemnation suffered damages amounting to $3,000 which was the cost of the reconstruction of the frontal wall of the cemetery. These damages were stipulated and paid apart thus limiting the issue of the case solely to the value of the land itself (R. 32, 35).

The respondent corporation is dedicated to the cemetery business. In 1945 bought the tract of land, from which the condemned parcel was severed, with an area of 18,469.96 sq. m. for the sum of $10,000 (R.108-109). After obtaining a permit from the government to dedicate this land to cemetery purposes, it built a wall around its perimeter and a chapel and a morgue for autopsies in its center. It also constructed a road from Insular Road No. 57 to the interior of the cemetery, with parking facilities at the back (R. 51) and built concrete graves at the rear part of the lot beginning from its center. No tombs or graves were built in the condemned property and no burial facilities were extended to it. (R. 28, 51, 60). The corporation did not extend the burial facilities to the condemned land because it had knowledge that the same was going to be taken by the government. (R. 60).

At the trial of the case respondent tried to prove that although the burial facilities of the cemetery were not extended to the land taken, and no interments had yet been done there, it should be understood that it was actually dedicated to and in use for cemetery purposes because it

formed part of the larger tract. Its theory of the case was that as the condemned land formed part of the entire tract, it was therefore actually dedicated to the cemetery business and purposes of the corporation, and hence, the amount of just compensation it was entitled to receive should be measured by the prices it (and other cemeteries of the vicinity) was charging for burial facilities (which included the land, the concrete graves built-in, labor and charges for management) less expenses, multiplied by the number of grave sites that could be obtained from the land taken. Also that the award of just compensation should be determined by the value the land had to its owner including the benefits or profits it had been deprived by the taking (R. 42, 48, 54, 56, 57, 61, 62). To this effect it tried to introduce evidence of sales of burial facilities and the value to the corporation of the condemned land. The trial judge rejected this evidence for being speculative and conjectural and also because the value to the owner was not the test to ascertain the just compensation. (R. 40, 42, 54-58, 60-61, 64, 68). The judge concluded that, notwithstanding the fact that the condemned parcel formed part of the entire tract comprised by the Buxeda Cemetery, it was undeveloped land, with no burial facilities extended to it and therefore not dedicated to the cemetery business of respondent though ready to be so, (R. 28) and applied the doctrine laid out in *Laureldale Cemetery Co.* v. *Reading Co.*, 303 Pa. 315, 154 Atl. 372. The Supreme Court of Puerto Rico, on appeal, sustained and affirmed the lower court's conclusions and rulings. (R. 111).

In reversing the judgment of the Supreme Court of Puerto Rico, as patently erroneous, the Court of Appeals concluded that the condemned land was dedicated to the cemetery business and purposes of respondent and therefore the rejected evidence should have been admitted (R. 133, opinion below). In arriving at its conclusions, the Court of Appeals, took in consideration, a change of the doctrine

of the case on appeal, made by respondent in its brief. We quote from the opinion of the court below;

> " . . . We have no doubt that the court would have been correct had it rejected the evidence as to the value of the individual burial sites if it had been introduced solely to indicate loss of business profits. For that purpose the evidence is irrelevant, *Mitchell* v. *United States*, 267 U. S. 341 (1925). *But the defendant states in its brief*: '*The evidence was offered not for the purpose of claiming profits as such, but to show the productiveness and capabilities for yielding profits and income as bearing on the value—the present value—of the land*' " (R. 132, opinion of the court below, italics supplied).

The Court of Appeals held (in the concurring opinion written by Chief Judge Magruder) that they could take an independent view from that of the Supreme Court of Puerto Rico, when the relevance, and hence admissibility, of evidence is determined by the factors which a condemnee is entitled to establish as bearing on the amount of just compensation guaranteed to him by the Organic Act, (Now the Constitution of the Commonwealth of Puerto Rico) because, it is intimated, is a federal question although questions of rules of evidence are questions of local law. (R. 134, opinion of the court below).

Specifications of Errors to be Urged

The Circuit Court of Appeals erred;

1. In holding that the judgment of the Supreme Court of Puerto Rico is patently erroneous.
2. In holding that evidence tending to show value to its owner, prices paid for developed cemetery land and burial facilities including profits, as a measure of compensation for condemned property, was admissible.
3. In holding that the Superme Court of Puerto Rico was inescapably wrong in applying to the instant case

the doctrine laid out in *Laureldale Cemetery Co.* v. *Reading Co.*, 303, Pa. 315, 154 Atl. 372.

4. In setting aside the findings of fact made by the trial judge and sustained by the Supreme Court of Puerto Rico.

5. In taking in consideration, to enter its judgment, a change of the theory and doctrine of the case on appeal made by respondent in its brief.

6. In failing to hold that the instant case presented solely questions of local Puerto Rican Law.

7. In failing to affirm the judgment entered by the Supreme Court of Puerto Rico.

Reasons for Granting the Writ

The decision of the court below is in direct conflict with the decision entered by the Ninth Circuit in *United States* v. *Honolulu Plantation Co.*, 122 F. 581, 584-585 and other Circuit Decisions; *U. S.* v. *Meyer*, 113 F. 2d. 387. We believe also that said decision is in conflict with decisions of this Court, *United States ex rel T.V.A.* v. *Powelson*, 319 U.S. 266, 285, *Olson* v. *United States*, 292 U. S. 246, 255.

The Honolulu Plantation case presented a situation similar in all respects to the instant case. There, as in this case, was at issue whether the value of condemned property to the owner, was the measure to award just compensation to a condemnee. In disposing with this matter, said court stated;

> "Compensation to be made for property taken by the exercise of the power of eminent domain is not its value to any particular company or individual, whether plaintiff, defendant, or anybody else, but the market value of such property at the time of the exercise of the power . . .
>
> "That the compensation to be made for land taken by the exercise of the power of eminent domain must be measured, not by its value to any particular person, but by the market value of the land at the time of the taking, is established by many authorities" . . .

and in *U. S.* v. *Meyer*, 113 F. 2d 387, was decided that the past profits and the probable future profits are too conjectural to furnish any basis for determination of value. In *United States ex rel T.V.A.* v. *Powelson*, 319 U.S. 281, this Court stated;

> "There are numerous business losses which result from condemnation of properties but which are not compensable under the Fifth Amendment."

The Puerto Rican government is actually developing an ample, far reaching and important program of public works necessary for the solution of the serious and complicated problems with which Puerto Rico is actually confronted, and for which is restoring to eminent domain proceedings. If evidence of this nature, speculative and conjectural, is permitted to be considered in awarding the just compensation to be paid a condemnee for his property, will result in a very serious burden to the public interest and, perhaps, an illegal enrichment on the part of the condemnee at the expense of the public funds.

We believe that this is the first case in which the Court of Appeals for the First Circuit applies the doctrine of "patent error and inescapable wrong", set forth by this Court in *De Castro* v. *Board of Commissioners*, 322 U. S. 451 (1944) and *Sancho Bonet* v. *Texas Co.* (P.R.) Inc., 308 U. S. 463 (1940). We submit that the intimation that in this case is presented a federal question on account of the prohibition contained in the Bill of Rights of the Organic Act (48 U.S.C. Section 737), now repealed, is not sufficient to reverse the judgment of the Supreme Court of Puerto Rico, when, as in the instant case, the fundamental question is one of local Puerto Rican law, in which event the Court of Appeals should have not upset the judgment of the Supreme Court of Puerto Rico as has been ruled by this Court in the above cited cases. Furthermore, even

if the rejection of evidence brou ught forth a federal ques-
tion under the Organic Act cited, l, at the actual state of the
proceedings, the law applicable w would be Article 2 Section
9 of the Constitution of the Comm monwealth of Puerto Rico,
which makes the interpretation and construction of the
just compensation prohibition, a a question solely of local
Puerto Rican law, and hence, in th hat event, the ruling found
in *De Castro* v. *Board of Commis issioners*, 322 U.S. (1944)
governs the issues of the instant c case.

Argument

1. *The Supreme Court of Puert to Rico was not inescapa-
bly wrong in upholding the trial l court's conclusion that
the land taken was undeveloped and not dedicated to the
cemetery business of respondent.*

This error deals with the appr preciation the trial Judge
gave to the evidence introduced.

It is a well settled rule in our j jurisdiction that the find-
ings of fact made by a lower cour rt, when sustained by the
evidence adduced before said cou urt, will not be disturbed
or altered unless it is shown and proven that the same are
the result of bias, partiality or p rejudice in the apprecia-
tion of the evidence.[1]

2. *The Supreme Court of Puert to Rico was not inescapa-
bly wrong in holding that evidence tending to show value
to its owner, prices paid for deve eloped cemetery land and
burial facilities including profits, as a measure of compensa-
tion for condemned property, was inadmissible.*

The just compensation guaran nteed by the Constitution
to the owner of property which is taken for public use by

[1] *Torres* v. *Buscaglia*, 68, P.R.R. 318; *Torres* v. *Gonzalez*, 68 P.R.R. 43; *Rivera* v. *Casiano*, 68 P.R.R. 177; *Sunland Biscuit Company* v. *Junta de Salario Minimo*, 68 P.R.R. 345; *Maldonado* v. *Quetell*, 68, P.R.R. 390.

by condemnation proceedings is due as of the date of the taking,[2] not at an earlier or future date;[3] and must be determined considering the property in the state it is at the moment of its condemnation.[4] Hence, it can not include any expected income the owner might obtain from its future subdivision and sale.[5]

Article 2 Section 9 of the Constitution of the Commonwealth of Puerto Rico, formerly contained in the Bill of Rights of the Organic Act, (48 U. S. C Section 737), requires the payment of just compensation for private property taken for public use. The fair cash market value of the property actually taken have been generally determined by the federal courts to be the amount the owner is entitled to receive as just compensation.[6] While the statement has sometimes been made that the owner is entitled to be put in as good a position pecuniarily as if his property had not been taken,[7] this does not mean that all losses suffered by the owner are compensable under the Fifth Amendment.[8] In *Monongahela Navigation Co.* v. *U. S.*, 148 U. S. 312, 326 (1893), the U. S. Supreme Court said: "'. . . Just compensation . . . is for the property, and not to the owner. Every other clause in the Fifth Amendment is personal. 'No person shall be held to answer for a capital, or otherwise infamous crime', etc. Instead of continuing that form of statement, and saying that no person shall be deprived of his property without just compensation, the personal element is left out, and the 'just compensation' is to be a full equivalent for the property taken."

The government is required to "pay only for what it takes, not for the opportunities which the owner may

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[2] *U. S.* v. *Miller*, 63 S. Ct. 27.
[3] *Empie* v. *U. S.*, 131 F. 2d 481.
[4] *Morton Butler Timber Co.* v. *U. S.*, 91 F. 2d 884.
[5] *City of Los Angeles* v. *Hughes*, 202 Cal. 731.
[6] *United States* v. *Miller*, 317 U. S. 369, 374.
[7] *Seaboard Air Line Ry.* v. *U.S.*, 261 U.S. 299, 304 (1923).
[8] *United States ex rel T.V.A.* v. *Powelson*, 319 U.S. 266, 285 (1943).

lose."[9] "There are numerous business losses which result from condemnation of properties but which are not compensable under the Fifth Amendment."[10] Thus, in *Mitchell* v. *United States*, 267 U.S. 341, 345 (1925), the owner was denied compensation for the destruction of his business which resulted in the taking of his land for a public project even though the business could not be reestablished elsewhere. Similarly, while the Fifth Amendment allows the owner the fair market value of his property, "it does not guarantee him a return of his investment."[11] Likewise, a mere interference with private contract rights involving property taken are not compensable although resulting in a pecuniary loss to the owner. "Frustration and appropriation are essentially different things".[12] And it will be recalled that the owner in the Miller case was not left in as good a position pecuniarily as if his property had not been taken since he was not permitted to recover the increment in value caused by the government project, an increment enjoyed by his neighbors whose lands were not taken.

The compensation which the government must pay for property which it condemns is the fair market value as between a willing buyer and a willing seller.[13] Special value to a particular user is not the test.[14]

The court of first instance in the case at bar did not violate the rules laid down in the foregoing decisions. Respondent was endeavoring to show the special value to it of the property condemned. This was not the issue.

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[9] *United States ex rel T.V.A.* v. *Powelson*, 319 U. S. 266, 282 (1943).

[10] *United States ex rel T.V.A.* v. *Powelson*, 319 U.S. 281.

[11] *United States ex rel T.V.A.* v. *Poyelson*, 319 U.S. 266, 285; *Olson* v. *United States*, 292 U.S. 246, 255.

[12] *Omnia Co.* v. *United States*, 261 U.S. 502, 508-513 (1923).

[13] *United States* v. *Miller*, 317 U.S. 369, 374 (1943).

[14] *United States* v. *Honolulu Plantation Co.*, 122 F. 581, 584-585 *Heisser Valley Land & Water Co.* v. *Ryan*, 190 F. 417 *In re Furman Street*, 17 *Wend*, 649, 670-671 (N.Y. 1836) *United States* v. *Miller*, 317 U.S. 369, 379 (1943).

The question to be determined was t fair market value of the property as between a hypotl ical willing buyer and willing seller. The fact that the o ner "may not want to part with his land because of its sp al adaptability for his own use . . . must be disregarde by the fact-finding body in arriving at 'fair' market valu," *United States* v. *Miller*, 317 U.S. 369, 375 (1943).

As we have seen, it is a settled rule hat the just compensation the Government has to pay or property taken is what the property itself, as it is at he moment of its condemnation, may be worth in an open market, disregarding the peculiar "value in use" to the wner. This is an accepted rule for many authorities on e subject, thus in Schmutz, "Condemnation Appraisal H dbook", page 12, paragraph 2, 1949, ed., we find;

"The courts have held that the val of the property to its owner or to the party seeking to condemn it is immaterial. The necessities of the publi what it is worth to the condemning party, and the pecul r "value in use" to the owner can not be considered. T e market value of the property is the yardstick for measu ing value or damages—in other words, its value in exch nge, its ability to command a price in the open market."

The material question to be determin in condemnation cases is the fair market value of the pr perty taken. The purposes for which defendants had bou t their lands, and for which they held them are irrelevant o question of just compensation.[15] The past profits and t e probable future profits are too conjectural to furnish a basis for determination of value.[16] The contemplated uture subdivision and development of land taken have been held, in our juris-

[15] *St. Joe Paper Co.* v. *U. S.*, 155 F. 2d 93.

[16] *U. S.* v. *Meyer*, 133 F. 2d 387, Certiorari den d, *Meyer* v. *U. S.*, 61 S. Ct. 174, *Laureldale Cemetery Co.* v. *Reading o.*, 154 Atl. 372 (Pa. 1931).

diction, not to be the test for measuring compensation on account of its conjectural and speculative nature."[17]

3. *The Supreme Court of Puerto Rico was not inescapably wrong or patently erroneous in applying to the instant case the doctrine laid out in Laureldale Cemetery Co.* v. *Reading Co.*, 303 Pa. 315, 154 Atl. 372.

The Court below distinguished the instant case from the Laureldale case stating that in this case the land was already and actually dedicated to cemetery and burial purposes while in the Laureldale case that was not the proper situation. (R. 130, opinion below). From a study of the facts pertaining to both cases there appear the following similarities:

In both cases the corporation was formed to dedicate itself to the cemetery business. In the case at bar respondent acquired, before the time of the condemnation, 18,469.96 sq. m. of land which were to be dedicated to cemetery purposes. Since 1946 this cemetery was in operation. In the Laureldale case the land was bought in 1923, to wit, four years prior to the date when the condemnation in said case took place.

In both cases the owners had made investments necessary to operate the business and had already sold grave sites and interments were made. No interments had yet been made in either condemned parcel of land at the time the same were taken, neither burial facilities were built-in.

To make this case even more similiar to the Laureldale case we have the fact that in the instant case respondent paid $10,000 in 1945, for the 18,469.96 sq. m. that comprised Cementerio Buxeda and asked $52,846.50 for the 1,642.41 sq. m. taken, that is, ten times more or less, its original cost.

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[17] *People of Puerto Rico* v. *Huyke*, 70 P.R.R. 720, *Puerto Rico Housing Authority* v. *Echegaray*, No. 10,160, *Supreme Court of Puerto Rico*, decided June 29, 1951.

In the Laureldale case defendants paid $500 per acre, and asked around $26,000 per acre. This fantastic figure induced the Supreme Court of Pennsylvania to call it "real estate alchemy" (p. 373).

The following excerpt is taken from the opinion rendered in the Laureldale case:

. . . "The only thing exceptional about this land is, first, that it has been selected as part of a cemetery site; and, second, it is claimed for it that as a cemetery site it possesses exceptional advantages. If those or similar features make any land appropriated under eminent domain an exception to the established rule for measuring damages, the quantity of appropriated land which will hereafter be equally entitled to exceptional value measuring will soon make the application of the old rule the exception".

4. *The Court of Appeals erred in considering, to render its opinion and judgment, a change of the theory and doctrine of the case, on appeal, made by respondent in its brief.*

It is a settled rule in Puerto Rican jurisdiction and in this jurisdiction, that, on appeal, the appellate courts will not consider a change in the theory of the case. The appellate courts will only consider the cases on appeal as presented before the court of first instance.[18]

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[18] *Latorre* v. *Cruz*, 67 P.R.R. 696; *Serra Garabis & Co.* v. *Municipio*, 42 P.R.R. 452; *Madera & Hno. Inc* v. *Solares & Co.* 43 P.R.R. 131; *Felicie* v. *Porto Rico Racing Corp.*, 38 P.R.R. 423; *Porto Rico Benevolent Society* v. *Municipality of Ponce*, 28 P.R.R. 773; *Calderon* v. *Reyes*, 31 P.R.R. 260; *Cortijo* v. *Rosario*, 33 P.R.R. 415; *Garcia* v. *Diaz*, 33 P.R.R. 98; *Sucesion Orcasitas* v. *Sucesion Orcasitas*, 21 P.R.R. 105; *Coto* v. *Rafas*, 18 P.R.R. 493; *Figueroa* v. *Figueroa, et als*, 23 P.R.R. 405; *Torres* v. *Porto Rico Racing Corp.*, 40 P.R.R. 423; *Flores* v. *Silva*, 60 P.R.R. 363; *San Juan Light & Transit Co.* v. *Requena*, 224 U.S. 89.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

San Juan, Puerto Rico, September 23, 1952.

Respectfully submitted,

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